

CENTER FOR DISABILITY ACCESS
Raymond Ballister Jr., Esq., SBN 111282
Russell Handy, Esq., SBN 195058
Amanda Seabock, Esq., SBN 289900
Zachary Best, Esq., SBN 166035
Mail: 8033 Linda Vista Road, Suite 200
San Diego, CA 92111
(858) 375-7385; (888) 422-5191 fax
amandas@potterhandy.com
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Andres Gomez,

Plaintiff,

v.

**Jackson Family Wines, Inc., a
Delaware Corporation, dba
Matanzas Creek Winery**

Defendant.

Case No.

**Complaint for Damages and
Injunctive Relief for Violations
of: American's With Disabilities
Act; Unruh Civil Rights Act**

**NOT RELATING TO A
CONSTRUCTION-RELATED
BARRIER AS DEFINED IN CAL.
CIV. CODE § 55.3**

Plaintiff Andres Gomez ("Plaintiff") complains of Jackson Family Wines Inc., a Delaware Corporation, dba Matanzas Creek Winery; ("Defendant"), and alleges as follows:

PARTIES:

1. Plaintiff is a visually-impaired individual and a member of a protected class of persons under the Americans with Disabilities Act. Plaintiff Talkback or similar software to navigate websites and applications on electronic devices.

1 Plaintiff is legally blind¹ and cannot use an electronic device without
2 assistance of screen-reader software (“SRS”).

3 2. Defendant Jackson Family Wines Inc., a Delaware Corporation, dba
4 Matanzas Creek Winery (“Jackson Family Wines Inc.”), owned or operated
5 Matanzas Creek Winery located in Sonoma County, California, in March
6 2021 and August 2021.

7 3. Defendant Jackson Family Wines Inc., owns or operates Matanzas
8 Creek Winery located in Sonoma County, California, currently.

9 4. Defendant Jackson Family Wines Inc., owned or operated Matanzas
10 Creek Winery website, with a root domain of:
11 <https://www.matanzascreek.com/>, and all related domains, sub-domains
12 and/or content contained within it, (“Website”) in March 2021 and August
13 2021.

14 5. Defendant Jackson Family Wines Inc., owns or operates Matanzas
15 Creek Winery website currently.

16 6. Plaintiff does not know the true names of Defendants, their business
17 capacities, their ownership connection to the property and business, or their
18 relative responsibilities in causing the access violations herein complained of,
19 and alleges a joint venture and common enterprise by all such Defendants.
20 Plaintiff is informed and believes that each of the Defendants herein, is
21 responsible in some capacity for the events herein alleged or is a necessary
22 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
23 the true names, capacities, connections, and responsibilities of the Defendants
24 are ascertained.

25 _____
26 ¹ Plaintiff uses the terms “visually-impaired” or “blind” interchangeably to
27 refer to individuals, including himself, who meet the legal definition of
28 blindness. (visual acuity of 20/200 or worse.) Some individuals who meet
these criteria have no vision, others have limited vision.

JURISDICTION & VENUE:

7. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (“ADA”)

8. This court has supplemental jurisdiction over Plaintiff’s non-federal claims pursuant to 28 U.S.C. § 1367 because Plaintiff’s Unruh claims are formed from the same case and/or controversy and are related to Plaintiff’s ADA claims. A violation of the ADA is a violation of Unruh. (Cal. Code §51(f).

9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b). Defendant is subject to personal jurisdiction in this District due to its business contacts with the District, and a substantial portion of the complained of conduct occurred in this District.

FACTUAL ALLEGATIONS:

10. Plaintiff is a legally blind person and a member of a protected class under the ADA. Plaintiff is proficient with and uses SRS to access the internet and read internet content on computers and mobile devices.

11. Plaintiff cannot use a computer without the assistance of screen reader software. (“SRS”).

12. Jackson Family Wines Inc., operates privileges, goods or services out of a physical location in California. These services are open to the public, places of public accommodation, and business establishments.

13. The Website is a nexus between Jackson Family Wines Inc., customers and the terrestrial based privileges, goods or services offered by Jackson Family Wines Inc.

14. Jackson Family Wines Inc., offers websites and digital booking as some of the facilities, privileges, and advantages offered by Defendants to patrons of the Jackson Family Wines Inc., in connection with their patronage at the

1 Jackson Family Wines Inc.

2 15. Among the services offered include: details about the wine and the
3 Jackson Family Wines Inc., itself, location and contact information; Jackson
4 Family Wines Inc., policies; information about wine, deals and promotions
5 without any ambiguity as to the amenities that would be available to the
6 patron.

7 16. Plaintiff was a prospective customer who wished to access Defendant's
8 goods and services of the Jackson Family Wines Inc.

9 17. Plaintiff visited the Website in March 2021 and August 2021 in search
10 of a winery/wine vineyard to potentially visit this location to purchase wine or
11 do some wine tasting or potentially make my own wine since we were in the
12 California area and potentially wanted to go to Northern California for this
13 experience since I have family who lives in Northern California.

14 18. When Plaintiff attempted to navigate the Website, Plaintiff encountered
15 numerous accessibility design faults that prevented him from navigating the
16 site successfully using SRS. Investigation into his experience revealed barriers,
17 including, but not limited to:

- 18 a. The website contains empty or redundant links resulting in
19 additional and inefficient navigation by SRS users.

20 19. These inaccessible elements rendered the ostensibly "accessible"
21 elements inaccessible as a result of difficulty and confusion navigating the
22 numerous inaccessible elements.

23 20. Currently, the defendants either fail to provide an accessible website or
24 Defendants have failed to maintain in working and useable conditions those
25 website features required to provide ready access to persons with disabilities.

26 21. Despite multiple attempts to access the Website using Plaintiff's
27 computer and mobile device, Plaintiff has been denied the full use and
28 enjoyment of the facilities, goods and services offered by Defendants as a

1 result of the accessibility barriers on the Website.

2 22. Plaintiff personally encountered accessibility barriers and has actual
3 knowledge of them.

4 23. By failing to provide an accessible website, the defendants denied
5 Plaintiff full and equal access to the facilities privileges or advantages offered
6 to their customers.

7 24. Plaintiff has been deterred from returning to the Website as a result of
8 these prior experiences.

9 25. The failure to provide accessible facilities created difficulty and
10 discomfort for the Plaintiff.

11 26. If the website had been constructed equally accessible to all individuals,
12 Plaintiff would have been able to navigate the Website and find information on
13 wine.

14 27. Additionally, Plaintiff is a tester in this litigation and seeks future
15 compliance with all federal and state laws. Plaintiff will return to the Website
16 to avail himself of its goods and/or services and to determine compliance with
17 the disability access laws once it is represented to him that the Jackson Family
18 Wines Inc., and Website are accessible.

19 28. Plaintiff is currently deterred from doing so because of Plaintiff's
20 knowledge of the existing barriers and uncertainty about the existence of yet
21 other barriers on the Website. If the barriers are not removed, Plaintiff will
22 face unlawful and discriminatory barriers again.

23 29. The barriers identified above violate easily accessible, well-established
24 industry standard guidelines for making websites accessible to people with
25 visual-impairments that use SRS to access websites. Given the prevalence of
26 websites that have implemented these standards and created accessible
27 websites, it is readily achievable to construct an accessible website without
28 undue burden on the Jackson Family Wines Inc., or a fundamental alteration

1 of the purpose of the Website.

2 30. Compliance with W3C Web Content Accessibility Guidelines
3 (“WCAG”) 2.0 AA standards are a viable remedy for these deficiencies and a
4 standard that has been adopted by California courts for website accessibility.

5 31. It’s been established that failure to remove these inaccessible conditions
6 violates the ADA and California law and requiring compliance with industry
7 access standards is a remedy available to the plaintiff.

8 32. The Website was intentionally designed, and based on information and
9 belief, it is the Defendants’, policy and practice to deny Plaintiff access to the
10 Website, and as a result, denies the goods and services that are otherwise
11 available to patrons of the Jackson Family Wines Inc.

12 33. Due to the failure to construct and operate the website in line with
13 industry standards, Plaintiff has been denied equal access to Defendant’s
14 Jackson Family Wines Inc., and the various goods, services, privileges,
15 opportunities and benefits offered to the public by the Jackson Family Wines
16 Inc.

17 34. Given the nature of the barriers and violations alleged herein, the
18 plaintiff alleges, on information and belief, that there are other violations and
19 barriers on the website, and/or at the Jackson Family Wines Inc., that relate to
20 his disability. In addition to the barriers he personally encountered, Plaintiff
21 intends to seek removal of all barriers on the Website that relate to his
22 disability. See *Doran v. 7-Eleven* (9th Cir. 2008) 524 F.3d 1034 (holding that
23 once a plaintiff encounters one barrier, they can sue to have all barriers that
24 relate to their disability removed regardless of whether they personally
25 encountered the barrier).

26 35. Plaintiff will amend the complaint, to provide further notice regarding
27 the scope of the additional demanded remediation in the event additional
28 barriers are uncovered through discovery. However, please be on notice that

1 the plaintiff seeks to have all barriers related to his disability remedied.

2
3 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
4 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
5 Defendants.) (42 U.S.C. section 12101, et seq.)

6 36. Plaintiff re-pleads and incorporates by reference, as if fully set forth
7 again herein, the allegations contained in all prior paragraphs of this
8 complaint. The Jackson Family Wines Inc., is a public accommodation with
9 the definition of Title III of the ADA, 42 USC § 12181.

10 37. The website provided by the Defendant is a service, privilege or
11 advantage and extension of Jackson Family Wines Inc., physical presence and
12 terrestrial services.

13 38. When a business provides services such as a website, it must provide an
14 accessible website.

15 39. Here, an accessible website has not been provided. A failure to provide
16 an accessible website is unlawful discrimination against persons with
17 disabilities.

18 40. Under the ADA, it is an act of discrimination to fail to ensure that the
19 privileges, advantages, accommodations, facilities, goods and services of any
20 place of public accommodation is offered on a full and equal basis by anyone
21 who owns, leases, or operates a place of public accommodation. See: 42 U.S.C.
22 § 12182(a). Discrimination is defined, inter alia, as follows: “A failure to make
23 reasonable modifications in policies, practices, or procedures, when such
24 modifications are necessary to afford goods, services, facilities, privileges,
25 advantages, or accommodations to individuals with disabilities, unless the
26 accommodation would work a fundamental alteration of those services and
27 facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).”

28 41. Here, the failure to ensure that the accessible facilities were available

1 and ready to be used by the plaintiff is a violation of the law.

2 42. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
3 set forth and incorporated therein, Plaintiff requests relief as set forth below.

4
5 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
6 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
7 Code § 51-53.)

8 43. Plaintiff repleads and incorporates by reference, as if fully set forth
9 again herein, the allegations contained in all prior paragraphs of this
10 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
11 that persons with disabilities are entitled to full and equal accommodations,
12 advantages, facilities, privileges, or services in all business establishment of
13 every kind whatsoever within the jurisdiction of the State of California. Cal.
14 Civ. Code §51(b).

15 44. The Unruh Act provides that a violation of the ADA is a violation of the
16 Unruh Act. Cal. Civ. Code § 51(f).

17 45. Defendants’ acts and omissions, as herein alleged, have violated the
18 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
19 rights to full and equal use of the accommodations, advantages, facilities,
20 privileges, or services offered.

21 46. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
22 discomfort or embarrassment for the plaintiff, the defendants are also each
23 responsible for statutory damages, i.e., a civil penalty. Cal. Civ. Code §
24 55.56(a)-(c).

25 47. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
26 set forth and incorporated therein, Plaintiff requests relief as set forth below.

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. A Declaratory Judgment that at the commencement of this action Defendants were in violation of the requirements of the ADA due to Defendants' failures to take action to ensure that its Website was fully accessible to and independently usable by blind and visually-impaired individuals.

2. For equitable nominal damages for violation of civil rights. See *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021) and any other equitable relief the Court finds appropriate.

3. Pursuant to 42 U.S.C § 12181, a preliminary and permanent injunction enjoining Defendants from violating the ADA with respect to its website.

4. Damages under the Unruh Civil Rights Act § 51², which provides for actual damages and a statutory minimum of \$4,000 for each offense.

5. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code § 52.

Dated: February 16, 2022

CENTER FOR DISABILITY ACCESS



By: _____

Amanda Seabock, Esq.
Attorney for Plaintiff

² Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.